



SPONSOR: Rep. Smith;
Reps. Hebner, Spence,
Bennett; Sen. Vaughn

HOUSE OF REPRESENTATIVES

136TH GENERAL ASSEMBLY

608

JUN 17 1992

HOUSE BILL NO. _____

AN ACT TO AMEND TITLE 6 OF THE DELAWARE CODE BY ADOPTING A NEW CHAPTER
RELATING TO THE CREATION, REGULATION AND DISSOLUTION OF DOMESTIC LIMITED
LIABILITY COMPANIES, AS WELL AS THE REGULATION OF FOREIGN LIMITED LIABILITY
COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (three-fifths
of all members elected to each house thereof concurring therein):

- 1 Section 1. Amend Title 6 of the Delaware Code, by adding thereto new
2 Sections 18-101 through 18-1107, which shall read as follows:
3 Limited Liability Company Act
4 Subchapter I. General Provisions
5 §18-101. Definitions.
6 As used in this chapter unless the context otherwise requires:
7 (1) "Bankruptcy" means an event that causes a person to cease to be
8 a member as provided in §18-304 of this chapter.
9 (2) "Certificate of formation" means the certificate referred to in
10 §18-201 of this chapter, and the certificate as amended.
11 (3) "Contribution" means any cash, property, services rendered or a
12 promissory note or other obligation to contribute cash or property or to
13 perform services, which a person contributes to a limited liability company in
14 his capacity as a member.
15 (4) "Foreign limited liability company" means a limited liability
16 company formed under the laws of any state or under the laws of any foreign
17 country or other foreign jurisdiction and denominated as such under the laws
18 of such state or foreign country or other foreign jurisdiction.
19 (5) "Limited liability company" and "domestic limited liability
20 company" means a limited liability company formed under the laws of the State
21 of Delaware and having 2 or more members.

1 (6) "Limited liability company agreement" means a written agreement
2 of the members as to the affairs of a limited liability company and the
3 conduct of its business. A limited liability company agreement or another
4 written agreement or writing:

5 a. May provide that a person shall be admitted as a member of a
6 limited liability company, or shall become an assignee of a limited
7 liability company interest or other rights or powers of a member to the
8 extent assigned, and shall become bound by the limited liability company
9 agreement (i) if such person (or a representative authorized by such
10 person orally, in writing or by other action such as payment for a
11 limited liability company interest) executes the limited liability
12 company agreement or any other writing evidencing the intent of such
13 person to become a member or assignee, or (ii) without such execution,
14 if such person (or a representative authorized by such person orally, in
15 writing or by other action such as payment for a limited liability
16 company interest) complies with the conditions for becoming a member or
17 assignee as set forth in the limited liability company agreement or any
18 other writing and requests (orally, in writing or by other action such
19 as payment for a limited liability company interest) that the records of
20 the limited liability company reflect such admission or assignment; and
21 b. Shall not be unenforceable by reason of its not having been
22 signed by a person being admitted as a member or becoming an assignee as
23 provided in paragraph a. of this subdivision, or by reason of its having
24 been signed by a representative as provided in this chapter.

25 (7) "Limited liability company interest" means a member's share of
26 the profits and losses of a limited liability company and a member's right to
27 receive distributions of the limited liability company's assets.

28 (8) "Liquidating trustee" means a person carrying out the winding up
29 of a limited liability company.

30 (9) "Manager" means a person who is named as a manager of a limited
31 liability company in, or designated as a manager of a limited liability
32 company pursuant to, a limited liability company agreement or similar
33 instrument under which the limited liability company is formed.

1 (10) "Member" means a person who has been admitted to a limited
2 liability company as a member as provided in §18-301 of this chapter or, in
3 the case of a foreign limited liability company, in accordance with the laws
4 of the state or foreign country or other foreign jurisdiction under which the
5 foreign limited liability company is organized.

6 (11) "Person" means a natural person, partnership (whether general
7 or limited and whether domestic or foreign), limited liability company,
8 foreign limited liability company, trust, estate, association, corporation,
9 custodian, nominee or any other individual or entity in its own or any
10 representative capacity.

11 (12) "Publicly traded limited liability company interest" means any
12 limited liability company interest that is (a) listed on a national securities
13 exchange, or (b) authorized for quotation on an inter-dealer quotation system
14 of a registered national securities association.

15 (13) "State" means the District of Columbia or the Commonwealth of
16 Puerto Rico or any state, territory, possession, or other jurisdiction of the
17 United States other than the State of Delaware.

18 §18-102. Name set forth in certificate.

19 The name of each limited liability company as set forth in its
20 certificate of formation:

21 (1) Shall contain the words "Limited Liability Company" or the
22 abbreviation "L.L.C.";

23 (2) May contain the name of a member or manager;

24 (3) Must be such as to distinguish it upon the records in the Office
25 of the Secretary of State from the name of any corporation, limited
26 partnership, business trust or limited liability company reserved, registered,
27 formed or organized under the laws of the State of Delaware or qualified to do
28 business or registered as a foreign corporation, foreign limited partnership
29 or foreign limited liability company in the State of Delaware; provided,
30 however, that a limited liability company may register under any name which is
31 not such as to distinguish it upon the records in the Office of the Secretary
32 of State from the name of any domestic or foreign corporation, limited
33 partnership, business trust or limited liability company reserved, registered,
34 formed or organized under the laws of the State of Delaware with the written

1 consent of the other corporation, limited partnership, business trust or
2 limited liability company, which written consent shall be filed with the
3 Secretary of State; and

4 (4) May contain the following words: ``Company'', ``Association'',
5 ``Club'', ``Foundation'', ``Fund'', ``Institute'', ``Society'', ``Union'',
6 ``Syndicate'', ``Limited'' or ``Trust'' (or abbreviations of like import).

7 §18-103. Reservation of name.

8 (a) The exclusive right to the use of a name may be reserved by:

9 (1) Any person intending to organize a limited liability company
10 under this chapter and to adopt that name;

11 (2) Any domestic limited liability company or any foreign limited
12 liability company registered in the State of Delaware which, in either case,
13 proposes to change its name;

14 (3) Any foreign limited liability company intending to register
15 in the State of Delaware and adopt that name; and

16 (4) Any person intending to organize a foreign limited liability
17 company and intending to have it register in the State of Delaware and adopt
18 that name.

19 (b) The reservation of a specified name shall be made by filing with
20 the Secretary of State an application, executed by the applicant, together
21 with a duplicate copy, which may be either a signed or conformed copy,
22 specifying the name to be reserved and the name and address of the applicant.
23 If the Secretary of State finds that the name is available for use by a
24 domestic or foreign limited liability company, he shall reserve the name for
25 the exclusive use of the applicant for a period of 120 days. Once having so
26 reserved a name, the same applicant may again reserve the same name for
27 successive 120 day periods. The right to the exclusive use of a reserved name
28 may be transferred to any other person by filing in the Office of the
29 Secretary of State a notice of the transfer, executed by the applicant for
30 whom the name was reserved, together with a duplicate copy, which may be
31 either a signed or conformed copy, specifying the name to be transferred and
32 the name and address of the transferee. The reservation of a specified name
33 may be cancelled by filing with the Secretary of State a notice of
34 cancellation, executed by the applicant or transferee, together with a

1 duplicate copy, which may be either a signed or conformed copy, specifying the
2 name reservation to be cancelled and the name and address of the applicant or
3 transferee. Any duplicate copy filed with the Secretary of State as required
4 by this subsection shall be returned by the Secretary of State to the person
5 who filed it or his representative with a notation thereon of the action taken
6 with respect to the original copy thereof by the Secretary of State.

7 (c) A fee as set forth in §18-1105(a)(1) of this chapter shall be paid
8 at the time of the initial reservation of any name, at the time of the renewal
9 of any such reservation and at the time of the filing of a notice of the
10 transfer or cancellation of any such reservation.

11 §18-104. Registered office; registered agent.

12 (a) Each limited liability company shall have and maintain in the
13 State of Delaware:

14 (1) A registered office, which may but need not be a place of its
15 business in the State of Delaware; and

16 (2) A registered agent for service of process on the limited
17 liability company, which agent may be either an individual resident of the
18 State of Delaware whose business office is identical with the limited
19 liability company's registered office, or a domestic corporation, or a foreign
20 corporation authorized to do business in the State of Delaware having a
21 business office identical with such registered office, or the limited
22 liability company itself.

23 (b) A registered agent may change the address of the registered office
24 of the limited liability company(ies) for which such registered agent is
25 registered agent to another address in the State of Delaware by paying a fee
26 as set forth in §18-1105(a)(2) of this chapter and filing with the Secretary
27 of State a certificate, executed by such registered agent, setting forth the
28 names of all the limited liability companies represented by such registered
29 agent, and the address at which such registered agent has maintained the
30 registered office for each of such limited liability companies, and further
31 certifying to the new address to which each such registered office will be
32 changed on a given day, and at which new address such registered agent will
33 thereafter maintain the registered office for each of the limited liability
34 companies recited in the certificate. Upon the filing of such certificate,

1 the Secretary of State shall furnish to the registered agent a certified copy
2 of the same under his hand and seal of office, and thereafter, or until
3 further change of address, as authorized by law, the registered office in the
4 State of Delaware of each of the limited liability companies recited in the
5 certificate shall be located at the new address of the registered agent
6 thereof as given in the certificate. In the event of a change of name of any
7 person acting as a registered agent of a limited liability company, such
8 registered agent shall file with the Secretary of State a certificate,
9 executed by such registered agent, setting forth the new name of such regis-
10 tered agent, the name of such registered agent before it was changed, the
11 names of all the limited liability companies represented by such registered
12 agent, and the address at which such registered agent has maintained the
13 registered office for each of such limited liability companies, and shall pay
14 a fee as set forth in §18-1105(a)(2) of this chapter. Upon the filing of such
15 certificate, the Secretary of State shall furnish to the registered agent a
16 certified copy of the certificate under his hand and seal of office. Filing a
17 certificate under this section shall be deemed to be an amendment of the
18 certificate of formation of each limited liability company affected thereby
19 and each such limited liability company shall not be required to take any
20 further action with respect thereto, to amend its certificate of formation
21 under §18-202 of this chapter. Any registered agent filing a certificate
22 under this section shall promptly, upon such filing, deliver a copy of any
23 such certificate to each limited liability company affected thereby.

24 (c) The registered agent of 1 or more limited liability companies may
25 resign and appoint a successor registered agent by paying a fee as set forth
26 in §18-1105(a)(2) of this chapter and filing a certificate with the Secretary
27 of State, stating that it resigns and the name and address of the successor
28 registered agent. There shall be attached to such certificate a statement
29 executed by each affected limited liability company ratifying and approving
30 such change of registered agent. Upon such filing, the successor registered
31 agent shall become the registered agent of such limited liability companies as
32 have ratified and approved such substitution and the successor registered
33 agent's address, as stated in such certificate, shall become the address of
34 each such limited liability company's registered office in the State of
35 Delaware. The Secretary of State shall furnish to the successor registered

1 agent a certified copy of the certificate of resignation. Filing of such
2 certificate of resignation shall be deemed to be an amendment of the
3 certificate of formation of each limited liability company affected thereby
4 and each such limited liability company shall not be required to take any
5 further action with respect thereto, to amend its certificate of formation
6 under §18-202 of this chapter.

7 (d) The registered agent of a limited liability company may resign
8 without appointing a successor registered agent by paying a fee as set forth
9 in §18-1105(a)(2) of this chapter and filing a certificate with the Secretary
10 of State stating that it resigns as registered agent for the limited liability
11 company identified in the certificate, but such resignation shall not become
12 effective until 120 days after the certificate is filed. There shall be
13 attached to such certificate an affidavit of such registered agent, if an
14 individual, or the president, a vice-president or the secretary thereof if a
15 corporation, that at least 30 days prior to and on or about the date of the
16 filing of said certificate, notices were sent by certified or registered mail
17 to the limited liability company for which such registered agent is resigning
18 as registered agent, at the principal office thereof within or outside the
19 State of Delaware, if known to such registered agent or, if not, to the last
20 known address of the attorney or other individual at whose request such
21 registered agent was appointed for such limited liability company, of the
22 resignation of such registered agent. After receipt of the notice of the
23 resignation of its registered agent, the limited liability company for which
24 such registered agent was acting shall obtain and designate a new registered
25 agent, to take the place of the registered agent so resigning. If such
26 limited liability company fails to obtain and designate a new registered agent
27 as aforesaid prior to the expiration of the period of 120 days after the
28 filing by the registered agent of the certificate of resignation, the
29 certificate of formation of such limited liability company shall be deemed to
30 be cancelled. After the resignation of the registered agent shall have become
31 effective as provided in this section and if no new registered agent shall
32 have been obtained and designated in the time and manner aforesaid, service of
33 legal process against the limited liability company for which the resigned
34 registered agent had been acting shall thereafter be upon the Secretary of
35 State in accordance with §18-105 of this chapter.

1 §18-105. Service of process on domestic limited liability companies.

2 (a) Service of legal process upon any domestic limited liability
3 company shall be made by delivering a copy personally to any manager of the
4 limited liability company in the State of Delaware or the registered agent of
5 the limited liability company in the State of Delaware, or by leaving it at
6 the dwelling house or usual place of abode in the State of Delaware of any
7 such manager or registered agent (if the registered agent be an individual),
8 or at the registered office or other place of business of the limited
9 liability company in the State of Delaware. If the registered agent be a
10 corporation, service of process upon it as such may be made by serving, in the
11 State of Delaware, a copy thereof on the president, vice-president, secretary,
12 assistant secretary or any director of the corporate registered agent.
13 Service by copy left at the dwelling house or usual place of abode of a
14 manager or registered agent, or at the registered office or other place of
15 business of the limited liability company in the State of Delaware, to be
16 effective, must be delivered thereat at least 6 days before the return date of
17 the process, and in the presence of an adult person, and the officer serving
18 the process shall distinctly state the manner of service in his return
19 thereto. Process returnable forthwith must be delivered personally to the
20 manager or registered agent.

21 (b) In case the officer whose duty it is to serve legal process cannot
22 by due diligence serve the process in any manner provided for by subsection
23 (a) of this section, it shall be lawful to serve the process against the
24 limited liability company upon the Secretary of State, and such service shall
25 be as effectual for all intents and purposes as if made in any of the ways
26 provided for in subsection (a) hereof. In the event that service is effected
27 through the Secretary of State in accordance with this subsection, the
28 Secretary of State shall forthwith notify the limited liability company by
29 letter, certified mail, return receipt requested, directed to the limited
30 liability company at its address as it appears on the records relating to such
31 limited liability company on file with the Secretary of State or, if no such
32 address appears, at its last registered office. Such letter shall enclose a
33 copy of the process and any other papers served on the Secretary of State
34 pursuant to this subsection. It shall be the duty of the plaintiff in the

1 event of such service to serve process and any other papers in duplicate, to
2 notify the Secretary of State that service is being effected pursuant to this
3 subsection, and to pay the Secretary of State the sum of \$50 for the use of
4 the State of Delaware, which sum shall be taxed as part of the costs in the
5 proceeding if the plaintiff shall prevail therein. The Secretary of State
6 shall maintain an alphabetical record of any such service setting forth the
7 name of the plaintiff and defendant, the title, docket number and nature of
8 the proceeding in which process has been served upon him, the fact that
9 service has been effected pursuant to this subsection, the return date
10 thereof, and the day and hour when the service was made. The Secretary of
11 State shall not be required to retain such information for a period longer
12 than 5 years from his receipt of the service of process.

13 §18-106. Nature of business permitted; powers.

14 (a) A limited liability company may carry on any lawful business,
15 purpose or activity with the exception of the business of granting policies of
16 insurance, or assuming insurance risks or banking as defined in §126 of Title
17 8.

18 (b) A limited liability company shall possess and may exercise all the
19 powers and privileges granted by this chapter or by any other law or by its
20 limited liability company agreement, together with any powers incidental
21 thereto, so far as such powers and privileges are necessary or convenient to
22 the conduct, promotion or attainment of the business, purposes or activities
23 of the limited liability company.

24 §18-107. Business transactions of member or manager with the limited
25 liability company.

26 Except as provided in a limited liability company agreement, a member or
27 manager may lend money to, borrow money from, act as a surety, guarantor or
28 endorser for, guarantee or assume one or more specific obligations of, provide
29 collateral for, and transact other business with a limited liability company
30 and, subject to other applicable law, has the same rights and obligations with
31 respect to any such matter as a person who is not a member or manager.

32 §18-108. Indemnification.

33 Subject to such standards and restrictions, if any, as are set forth in
34 its limited liability company agreement, a limited liability company may, and
35 shall have the power to, indemnify and hold harmless any member or manager or

1 other person from and against any and all claims and demands whatsoever.

2 §18-109. Service of process on managers and liquidating trustees.

3 (a) A manager or a liquidating trustee of a limited liability company
4 may be served with process in the manner prescribed in this section in all
5 civil actions or proceedings brought in the State of Delaware involving or
6 relating to the business of the limited liability company or a violation by
7 the manager or the liquidating trustee of a duty to the limited liability
8 company, or any member of the limited liability company, whether or not the
9 manager or the liquidating trustee is a manager or a liquidating trustee at
10 the time suit is commenced. A manager's or a liquidating trustee's serving as
11 such constitutes such person's consent to the appointment of the registered
12 agent of the limited liability company (or, if there is none, the Secretary of
13 State) as such person's agent upon whom service of process may be made as
14 provided in this section. Such service as a manager or a liquidating trustee
15 shall signify the consent of such manager or liquidating trustee that any
16 process when so served shall be of the same legal force and validity as if
17 served upon such manager or liquidating trustee within the State of Delaware
18 and such appointment of the registered agent (or, if there is none, the
19 Secretary of State) shall be irrevocable.

20 (b) Service of process shall be effected by serving the registered
21 agent (or, if there is none, the Secretary of State) with 1 copy of such
22 process in the manner provided by law for service of writs of summons. In the
23 event service is made under this subsection upon the Secretary of State, the
24 plaintiff shall pay to the Secretary of State the sum of \$50 for the use of
25 the State of Delaware, which sum shall be taxed as part of the costs of the
26 proceeding if the plaintiff shall prevail therein. In addition, the
27 Prothonotary or the Register in Chancery of the court in which the civil
28 action or proceeding is pending shall, within 7 days of such service, deposit
29 in the United States mails, by registered mail, postage prepaid, true and
30 attested copies of the process, together with a statement that service is
31 being made pursuant to this section, addressed to such manager or liquidating
32 trustee at the registered office of the limited liability company and at his
33 address last known to the party desiring to make such service.

34 (c) In any action in which any such manager or liquidating trustee has

1 been served with process as hereinabove provided, the time in which a
2 defendant shall be required to appear and file a responsive pleading shall be
3 computed from the date of mailing by the Prothonotary or the Register in
4 Chancery as provided in subsection (b) of this section; however, the court in
5 which such action has been commenced may order such continuance or
6 continuances as may be necessary to afford such manager or liquidating trustee
7 reasonable opportunity to defend the action.

8 (d) In a written limited liability company agreement or other writing,
9 a manager or member may consent to be subject to the nonexclusive jurisdiction
10 of the courts of, or arbitration in, a specified jurisdiction, or the
11 exclusive jurisdiction of the courts of, or the exclusivity of arbitration in,
12 the State of Delaware, and to be served with legal process in the manner
13 prescribed in such limited liability company agreement or other writing.

14 (e) Nothing herein contained limits or affects the right to serve
15 process in any other manner now or hereafter provided by law. This section is
16 an extension of and not a limitation upon the right otherwise existing of
17 service of legal process upon nonresidents.

18 (f) The Court of Chancery and the Superior Court may make all
19 necessary rules respecting the form of process, the manner of issuance and
20 return thereof and such other rules which may be necessary to implement this
21 section and are not inconsistent with this section.

22 Subchapter II. Formation; Certificate of Formation

23 §18-201. Certificate of formation.

24 (a) In order to form a limited liability company, 1 or more authorized
25 persons must execute a certificate of formation. The certificate of formation
26 shall be filed in the Office of the Secretary of State and set forth:

27 (1) The name of the limited liability company;

28 (2) The address of the registered office and the name and address
29 of the registered agent for service of process required to be maintained by
30 §18-104 of this chapter;

31 (3) If the limited liability company is to have a specific date
32 of dissolution, the latest date on which the limited liability company is to
33 dissolve; and

34 (4) Any other matters the members determine to include therein.

1 (b) A limited liability company is formed at the time of the filing of
2 the initial certificate of formation in the Office of the Secretary of State
3 or at any later date or time specified in the certificate of formation if, in
4 either case, there has been substantial compliance with the requirements of
5 this section. A limited liability company formed under this chapter shall be
6 a separate legal entity, the existence of which as a separate legal entity
7 shall continue until cancellation of the limited liability company's
8 certificate of formation.

9 (c) The filing of the certificate of formation in the Office of the
10 Secretary of State shall make it unnecessary to file any other documents under
11 Chapter 31 of this title.

12 §18-202. Amendment to certificate of formation.

13 (a) A certificate of formation is amended by filing a certificate of
14 amendment thereto in the Office of the Secretary of State. The certificate of
15 amendment shall set forth:

16 (1) The name of the limited liability company; and

17 (2) The amendment to the certificate of formation.

18 (b) A manager or, if there is no manager, then any member who becomes
19 aware that any statement in a certificate of formation was false when made, or
20 that any matter described has changed making the certificate of formation
21 false in any material respect, shall promptly amend the certificate of
22 formation.

23 (c) A certificate of formation may be amended at any time for any
24 other proper purpose.

25 (d) Unless otherwise provided in this chapter or unless a later
26 effective date or time (which shall be a date or time certain) is provided for
27 in the certificate of amendment, a certificate of amendment shall be effective
28 at the time of its filing with the Secretary of State.

29 §18-203. Cancellation of certificate.

30 A certificate of formation shall be cancelled upon the dissolution and
31 the completion of winding up of a limited liability company, or at any other
32 time there are less than 2 members, or as provided in §18-104(d) of this
33 chapter, or upon the filing of a certificate of merger or consolidation if the
34 limited liability company is not the surviving or resulting entity in a merger
35 or consolidation. A certificate of cancellation shall be filed in the Office

1 of the Secretary of State to accomplish the cancellation of a certificate of
2 formation upon the dissolution and the completion of winding up of a limited
3 liability company or at any other time there are not 2 members and shall set
4 forth:

- 5 (1) The name of the limited liability company;
- 6 (2) The date of filing of its certificate of formation;
- 7 (3) The reason for filing the certificate of cancellation;
- 8 (4) The future effective date or time (which shall be a date or
9 time certain) of cancellation if it is not to be effective upon the filing of
10 the certificate; and
- 11 (5) Any other information the person filing the certificate of
12 cancellation determines.

13 §18-204. Execution.

14 (a) Each certificate required by this subchapter to be filed in the
15 Office of the Secretary of State shall be executed by 1 or more authorized
16 persons.

17 (b) Unless otherwise provided in a limited liability company
18 agreement, any person may sign any certificate or amendment thereof or enter
19 into a limited liability company agreement or amendment thereof by an agent,
20 including an attorney-in-fact. An authorization, including a power of
21 attorney, to sign any certificate or amendment thereof or to enter into a
22 limited liability company agreement or amendment thereof need not be in
23 writing, need not be sworn to, verified or acknowledged, and need not be filed
24 in the Office of the Secretary of State, but if in writing, must be retained
25 by the limited liability company.

26 (c) The execution of a certificate by an authorized person constitutes
27 an oath or affirmation, under the penalties of perjury in the third degree,
28 that, to the best of the authorized person's knowledge and belief, the facts
29 stated therein are true.

30 §18-205. Execution, amendment or cancellation by judicial order.

31 (a) If a person required to execute a certificate required by this
32 subchapter fails or refuses to do so, any other person who is adversely
33 affected by the failure or refusal may petition the Court of Chancery to
34 direct the execution of the certificate. If the Court finds that the
35 execution of the certificate is proper and that any person so designated has

1 failed or refused to execute the certificate, it shall order the Secretary of
2 State to record an appropriate certificate.

3 (b) If a person required to execute a limited liability company
4 agreement or amendment thereof fails or refuses to do so, any other person who
5 is adversely affected by the failure or refusal may petition the Court of
6 Chancery to direct the execution of the limited liability company agreement or
7 amendment thereof. If the Court finds that the limited liability company
8 agreement or amendment thereof should be executed and that any person required
9 to execute the limited liability company agreement or amendment thereof has
10 failed or refused to do so, it shall enter an order granting appropriate
11 relief.

12 §18-206. Filing.

13 (a) The original signed copy of the certificate of formation and of
14 any certificates of amendment or cancellation (or of any judicial decree of
15 amendment or cancellation), and of any certificate of merger or consolidation
16 and of any restated certificate shall be delivered to the Secretary of State.
17 A person who executes a certificate as an agent or fiduciary need not exhibit
18 evidence of his authority as a prerequisite to filing. Any signature on any
19 certificate authorized to be filed with the Secretary of State under any
20 provision of this chapter may be a facsimile. Unless the Secretary of State
21 finds that any certificate does not conform to law, upon receipt of all filing
22 fees required by law he shall:

23 (1) Certify that the certificate of formation, the certificate of
24 amendment, the certificate of cancellation (or of any judicial decree of
25 amendment or cancellation), the certificate of merger or consolidation or the
26 restated certificate has been filed in his office by endorsing upon the
27 original certificate the word "Filed", and the date and hour of the filing.
28 This endorsement is conclusive of the date and time of its filing in the
29 absence of actual fraud;

30 (2) File and index the endorsed certificate; and

31 (3) Prepare and return to the person who filed it or his
32 representative a copy of the original signed instrument, similarly endorsed,
33 and shall certify such copy as a true copy of the original signed instrument.

34 (b) Upon the filing of a certificate of amendment (or judicial decree
35 of amendment) or restated certificate in the Office of the Secretary of State,

1 or upon the future effective date or time of a certificate of amendment (or
2 judicial decree thereof) or restated certificate, as provided for therein, the
3 certificate of formation shall be amended or restated as set forth therein.
4 Upon the filing of a certificate of cancellation (or a judicial decree
5 thereof), or a certificate of merger or consolidation which acts as a
6 certificate of cancellation, or upon the future effective date or time of a
7 certificate of cancellation (or a judicial decree thereof) or of a certificate
8 of merger or consolidation which acts as a certificate of cancellation, as
9 provided for therein, or as specified in §18-104(d) of this chapter, the
10 certificate of formation is cancelled.

11 (c) A fee as set forth in §18-1105(a)(3) of this chapter shall be paid
12 at the time of the filing of a certificate of formation, a certificate of
13 amendment, a certificate of cancellation, a certificate of merger or
14 consolidation or a restated certificate.

15 (d) A fee as set forth in §18-1105(a)(4) of this chapter shall be paid
16 for a certified copy of any paper on file as provided for by this chapter, and
17 a fee as set forth in §18-1105(a)(5) of this chapter shall be paid for each
18 page copied.

19 §18-207. Notice.

20 The fact that a certificate of formation is on file in the Office of the
21 Secretary of State is notice that the entity formed in connection with the
22 filing of the certificate of formation is a limited liability company formed
23 under the laws of the State of Delaware and is notice of all other facts set
24 forth therein which are required to be set forth in a certificate of formation
25 by §18-201(a)(1) and (2) of this chapter.

26 §18-208. Restated certificate.

27 (a) A limited liability company may, whenever desired, integrate into
28 a single instrument all of the provisions of its certificate of formation
29 which are then in effect and operative as a result of there having theretofore
30 been filed with the Secretary of State 1 or more certificates or other
31 instruments pursuant to any of the sections referred to in this subchapter and
32 it may at the same time also further amend its certificate of formation by
33 adopting a restated certificate of formation.

34 (b) If a restated certificate of formation merely restates and

1 integrates but does not further amend the initial certificate of formation, as
2 theretofore amended or supplemented by any instrument that was executed and
3 filed pursuant to any of the sections in this subchapter, it shall be
4 specifically designated in its heading as a ``Restated Certificate of
5 Formation'' together with such other words as the limited liability company
6 may deem appropriate and shall be executed by an authorized person and filed
7 as provided in §18-206 of this chapter in the Office of the Secretary of
8 State. If a restated certificate restates and integrates and also further
9 amends in any respect the certificate of formation, as theretofore amended or
10 supplemented, it shall be specifically designated in its heading as an
11 ``Amended and Restated Certificate of Formation'' together with such other
12 words as the limited liability company may deem appropriate and shall be
13 executed by at least 1 authorized person, and filed as provided in §18-206 of
14 this chapter in the Office of the Secretary of State.

15 (c) A restated certificate of formation shall state, either in its
16 heading or in an introductory paragraph, the limited liability company's
17 present name, and, if it has been changed, the name under which it was
18 originally filed, and the date of filing of its original certificate of
19 formation with the Secretary of State, and the future effective date or time
20 (which shall be a date or time certain) of the restated certificate if it is
21 not to be effective upon the filing of the restated certificate. A restated
22 certificate shall also state that it was duly executed and is being filed in
23 accordance with this section. If a restated certificate only restates and
24 integrates and does not further amend a limited liability company's
25 certificate of formation as theretofore amended or supplemented and there is
26 no discrepancy between those provisions and the restated certificate, it shall
27 state that fact as well.

28 (d) Upon the filing of a restated certificate of formation with the
29 Secretary of State, or upon the future effective date or time of a restated
30 certificate of formation as provided for therein, the initial certificate of
31 formation, as theretofore amended or supplemented, shall be superseded;
32 thenceforth, the restated certificate of formation, including any further
33 amendment or changes made thereby, shall be the certificate of formation of
34 the limited liability company, but the original effective date of formation
35 shall remain unchanged.

1 (e) Any amendment or change effected in connection with the
2 restatement and integration of the certificate of formation shall be subject
3 to any other provision of this chapter, not inconsistent with this section,
4 which would apply if a separate certificate of amendment were filed to effect
5 such amendment or change.

6 §18-209. Merger and consolidation.

7 (a) As used in this section, "other business entity" means a
8 corporation, or a business trust or association, a real estate investment
9 trust, a common-law trust, or any other unincorporated business, including a
10 partnership (whether general or limited), and a foreign limited liability
11 company, but excluding a domestic limited liability company.

12 (b) Pursuant to an agreement of merger or consolidation, a domestic
13 limited liability company may merge or consolidate with or into 1 or more
14 domestic limited liability companies or other business entities formed or
15 organized under the laws of the State of Delaware or any other state or the
16 United States or any foreign country or other foreign jurisdiction, with such
17 domestic limited liability company or other business entity as the agreement
18 shall provide being the surviving or resulting domestic limited liability
19 company or other business entity. Unless otherwise provided in the limited
20 liability company agreement, a merger or consolidation shall be approved by
21 each domestic limited liability company which is to merge or consolidate by
22 the members or, if there is more than one class or group of members, then by
23 each class or group of members, in either case, by members who own more than
24 50 percent of the then current percentage or other interest in the profits of
25 the domestic limited liability company owned by all of the members or by the
26 members in each class or group, as appropriate. In connection with a merger
27 or consolidation hereunder, rights or securities of, or interests in, a
28 domestic limited liability company or other business entity which is a
29 constituent party to the merger or consolidation may be exchanged for or
30 converted into cash, property, rights or securities of, or interests in, the
31 surviving or resulting domestic limited liability company or other business
32 entity or, in addition to or in lieu thereof, may be exchanged for or
33 converted into cash, property, rights or securities of, or interests in, a
34 domestic limited liability company or other business entity which is not the
35 surviving or resulting limited liability company or other business entity in

1 the merger or consolidation. Notwithstanding prior approval, an agreement of
2 merger or consolidation may be terminated or amended pursuant to a provision
3 for such termination or amendment contained in the agreement of merger or
4 consolidation.

5 (c) If a domestic limited liability company is merging or
6 consolidating under this section, the domestic limited liability company or
7 other business entity surviving or resulting in or from the merger or
8 consolidation shall file a certificate of merger or consolidation in the
9 Office of the Secretary of State. The certificate of merger or consolidation
10 shall state:

11 (1) The name and jurisdiction of formation or organization of
12 each of the domestic limited liability companies or other business entities
13 which is to merge or consolidate;

14 (2) That an agreement of merger or consolidation has been
15 approved and executed by each of the domestic limited liability companies or
16 other business entities which is to merge or consolidate;

17 (3) The name of the surviving or resulting domestic limited
18 liability company or other business entity;

19 (4) The future effective date or time (which shall be a date or
20 time certain) of the merger or consolidation if it is not to be effective upon
21 the filing of the certificate of merger or consolidation;

22 (5) That the agreement of merger or consolidation is on file at a
23 place of business of the surviving or resulting domestic limited liability
24 company or other business entity, and shall state the address thereof;

25 (6) That a copy of the agreement of merger or consolidation will
26 be furnished by the surviving or resulting domestic limited liability company
27 or other business entity, on request and without cost, to any member of any
28 domestic limited liability company or any person holding an interest in any
29 other business entity which is to merge or consolidate; and

30 (7) If the surviving or
31 resulting entity is not a domestic limited liability company, or a corporation
32 or limited partnership organized under the laws of the State of Delaware, or a
33 business trust organized under 12 Del.C., Ch. 38, a statement that such
34 surviving or resulting other business entity agrees that it may be served with

1 process in the State of Delaware in any action, suit or proceeding for the
2 enforcement of any obligation of any domestic limited liability company which
3 is to merge or consolidate, irrevocably appointing the Secretary of State as
4 its agent to accept service of process in any such action, suit or proceeding
5 and specifying the address to which a copy of such process shall be mailed to
6 it by the Secretary of State. In the event of service hereunder upon the
7 Secretary of State, the procedures set forth in §18-911(c) of this chapter
8 shall be applicable, except that the plaintiff in any such action, suit or
9 proceeding shall furnish the Secretary of State with the address specified in
10 the certificate of merger or consolidation provided for in this section and
11 any other address which the plaintiff may elect to furnish, together with
12 copies of such process as required by the Secretary of State, and the
13 Secretary of State shall notify such surviving or resulting other business
14 entity at all such addresses furnished by the plaintiff in accordance with the
15 procedures set forth in §18-911(c) of this chapter.

16 (d) Unless a future effective date or time is provided in a
17 certificate of merger or consolidation, in which event a merger or
18 consolidation shall be effective at any such future effective date or time, a
19 merger or consolidation shall be effective upon the filing in the Office of
20 the Secretary of State of a certificate of merger or consolidation.

21 (e) A certificate of merger or consolidation shall act as a
22 certificate of cancellation for a domestic limited liability company which is
23 not the surviving or resulting entity in the merger or consolidation.

24 (f) An agreement of merger or consolidation approved in accordance
25 with subsection (b) of this section may (1) effect any amendment to the
26 limited liability company agreement or (2) effect the adoption of a new
27 limited liability company agreement, for a limited liability company if it is
28 the surviving or resulting limited liability company in the merger or
29 consolidation. Any amendment to a limited liability company agreement or
30 adoption of a new limited liability company agreement made pursuant to the
31 foregoing sentence shall be effective at the effective time or date of the
32 merger or consolidation. The provisions of this subsection shall not be
33 construed to limit the accomplishment of a merger or of any of the matters
34 referred to herein by any other means provided for in a limited liability
35 company agreement or other agreement or as otherwise permitted by law,

1 including that the limited liability company agreement of any constituent
2 limited liability company to the merger or consolidation (including a limited
3 liability company formed for the purpose of consummating a merger or
4 consolidation) shall be the limited liability company agreement of the
5 surviving or resulting limited liability company.

6 (g) When any merger or consolidation shall have become effective under
7 this section, for all purposes of the laws of the State of Delaware, all of
8 the rights, privileges and powers of each of the domestic limited liability
9 companies and other business entities that have merged or consolidated, and
10 all property, real, personal and mixed, and all debts due to any of said
11 domestic limited liability companies and other business entities, as well as
12 all other things and causes of action belonging to each of such domestic
13 limited liability companies and other business entities, shall be vested in
14 the surviving or resulting domestic limited liability company or other
15 business entity, and shall thereafter be the property of the surviving or
16 resulting domestic limited liability company or other business entity as they
17 were of each of the domestic limited liability companies and other business
18 entities that have merged or consolidated, and the title to any real property
19 vested by deed or otherwise, under the laws of the State of Delaware, in any
20 of such domestic limited liability companies and other business entities,
21 shall not revert or be in any way impaired by reason of this chapter; but all
22 rights of creditors and all liens upon any property of any of said domestic
23 limited liability companies and other business entities shall be preserved
24 unimpaired, and all debts, liabilities and duties of each of the said domestic
25 limited liability companies and other business entities that have merged or
26 consolidated shall thenceforth attach to the surviving or resulting domestic
27 limited liability company or other business entity, and may be enforced
28 against it to the same extent as if said debts, liabilities and duties had
29 been incurred or contracted by it. Unless otherwise agreed, a merger or
30 consolidation of a domestic limited liability company, including a domestic
31 limited liability company which is not the surviving or resulting entity in
32 the merger or consolidation, shall not require such domestic limited liability
33 company to wind up its affairs under §18-803 of this chapter or pay its
34 liabilities and distribute its assets under §18-804 of this chapter.

35

Subchapter III. Members

1 §18-301. Admission of members.

2 (a) In connection with the formation of a limited liability company, a
3 person acquiring a limited liability company interest is admitted as a member
4 of the limited liability company upon the later to occur of:

5 (1) The formation of the limited liability company; or

6 (2) The time provided in and upon compliance with the limited
7 liability company agreement or, if the limited liability company agreement
8 does not so provide, when the person's admission is reflected in the records
9 of the limited liability company.

10 (b) After the formation of a limited liability company, a person
11 acquiring a limited liability company interest is admitted as a member of the
12 limited liability company:

13 (1) In the case of a person acquiring a limited liability company
14 interest directly from the limited liability company, at the time provided in
15 and upon compliance with the limited liability company agreement or, if the
16 limited liability company agreement does not so provide, upon the consent of
17 all members and when the person's admission is reflected in the records of the
18 limited liability company; or

19 (2) In the case of an assignee of a limited liability company
20 interest, as provided in §18-704(a) of this chapter and at the time provided
21 in and upon compliance with the limited liability company agreement or, if the
22 limited liability company agreement does not so provide, when any such
23 person's permitted admission is reflected in the records of the limited
24 liability company.

25 (c) A person may be admitted to a limited liability company as a
26 member of the limited liability company and may receive a limited liability
27 company interest in the limited liability company without making a
28 contribution or being obligated to make a contribution to the limited
29 liability company.

30 §18-302. Classes and voting.

31 (a) A limited liability company agreement may provide for classes or
32 groups of members having such relative rights, powers and duties as the
33 limited liability company agreement may provide, and may make provision for
34 the future creation in the manner provided in the limited liability company
35 agreement of additional classes or groups of members having such relative

1 rights, powers and duties as may from time to time be established, including
2 rights, powers and duties senior to existing classes and groups of members. A
3 limited liability company agreement may provide for the taking of an action,
4 including the amendment of the limited liability company agreement, without
5 the vote or approval of any member or class or group of members, including an
6 action to create under the provisions of the limited liability company
7 agreement a class or group of limited liability company interests that was not
8 previously outstanding.

9 (b) A limited liability company agreement may grant to all or certain
10 identified members or a specified class or group of the members the right to
11 vote separately or with all or any class or group of the members or managers,
12 on any matter. Voting by members may be on a per capita, number, financial
13 interest, class, group or any other basis.

14 (c) A limited liability company agreement which grants a right to vote
15 may set forth provisions relating to notice of the time, place or purpose of
16 any meeting at which any matter is to be voted on by any members, waiver of
17 any such notice, action by consent without a meeting, the establishment of a
18 record date, quorum requirements, voting in person or by proxy, or any other
19 matter with respect to the exercise of any such right to vote.

20 §18-303. Liability to third parties.

21 Except as otherwise provided by this chapter, the debts, obligations and
22 liabilities of a limited liability company, whether arising in contract, tort
23 or otherwise, shall be solely the debts, obligations and liabilities of the
24 limited liability company; and no member or manager of a limited liability
25 company shall be obligated personally for any such debt, obligation or
26 liability of the limited liability company solely by reason of being a member
27 or acting as a manager of the limited liability company.

28 §18-304. Events of bankruptcy.

29 A person ceases to be a member of a limited liability company upon the
30 happening of any of the following events:

31 (a) Unless otherwise provided in a limited liability company
32 agreement, or with the written consent of all members, a member:

33 (1) Makes an assignment for the benefit of creditors;

34 (2) Files a voluntary petition in bankruptcy;

1 (3) Is adjudged a bankrupt or insolvent, or has entered against
2 him an order for relief, in any bankruptcy or insolvency proceeding;

3 (4) Files a petition or answer seeking for himself any
4 reorganization, arrangement, composition, readjustment, liquidation,
5 dissolution or similar relief under any statute, law or regulation;

6 (5) Files an answer or other pleading admitting or failing to
7 contest the material allegations of a petition filed against him in any
8 proceeding of this nature;

9 (6) Seeks, consents to or acquiesces in the appointment of a
10 trustee, receiver or liquidator of the member or of all or any substantial
11 part of his properties; or

12 (b) Unless otherwise provided in a limited liability company
13 agreement, or with the written consent of all members, 120 days after the
14 commencement of any proceeding against the member seeking reorganization,
15 arrangement, composition, readjustment, liquidation, dissolution or similar
16 relief under any statute, law or regulation, if the proceeding has not been
17 dismissed, or if within 90 days after the appointment without his consent or
18 acquiescence of a trustee, receiver or liquidator of the member or of all or
19 any substantial part of his properties, the appointment is not vacated or
20 stayed, or within 90 days after the expiration of any such stay, the
21 appointment is not vacated.

22 §18-305. Access to and confidentiality of information; records.

23 (a) Each member of a limited liability company has the right, subject
24 to such reasonable standards (including standards governing what information
25 and documents are to be furnished at what time and location and at whose
26 expense) as may be set forth in a limited liability company agreement or other-
27 wise established by the manager or, if there is no manager, then by the
28 members, to obtain from the limited liability company from time to time upon
29 reasonable demand for any purpose reasonably related to the member's interest
30 as a member of the limited liability company:

31 (1) True and full information regarding the status of the
32 business and financial condition of the limited liability company;

33 (2) Promptly after becoming available, a copy of the limited
34 liability company's federal, state and local income tax returns for each year;

1 (3) A current list of the name and last known business, residence
2 or mailing address of each member and manager;

3 (4) A copy of any written limited liability company agreement and
4 certificate of formation and all amendments thereto, together with executed
5 copies of any written powers of attorney pursuant to which the limited
6 liability company agreement and any certificate and all amendments thereto
7 have been executed;

8 (5) True and full information regarding the amount of cash and a
9 description and statement of the agreed value of any other property or
10 services contributed by each member and which each member has agreed to
11 contribute in the future, and the date on which each became a member; and

12 (6) Other information regarding the affairs of the limited
13 liability company as is just and reasonable.

14 (b) Each manager shall have the right to examine all of the
15 information described in §18-305(a) of this chapter for a purpose reasonably
16 related to his position as a manager.

17 (c) The manager of a limited liability company shall have the right to
18 keep confidential from the members, for such period of time as the manager
19 deems reasonable, any information which the manager reasonably believes to be
20 in the nature of trade secrets or other information the disclosure of which
21 the manager in good faith believes is not in the best interest of the limited
22 liability company or could damage the limited liability company or its
23 business or which the limited liability company is required by law or by
24 agreement with a third party to keep confidential.

25 (d) A limited liability company may maintain its records in other than
26 a written form if such form is capable of conversion into written form within
27 a reasonable time.

28 (e) Any demand by a member under this section shall be in writing and
29 shall state the purpose of such demand.

30 (f) Any action to enforce any right arising under this section shall
31 be brought in the Court of Chancery.

32 §18-306. Remedies for breach of limited liability company agreement by
33 member.

34 A limited liability company agreement may provide that (1) a member who
35 fails to perform in accordance with, or to comply with the terms and

1 conditions of, the limited liability company agreement shall be subject to
2 specified penalties or specified consequences, and (2) at the time or upon the
3 happening of events specified in the limited liability company agreement, a
4 member shall be subject to specified penalties or specified consequences.

5 Subchapter IV. Managers

6 §18-401. Admission of managers.

7 A person may be named or designated as a manager of the limited
8 liability company as provided in §18-101(9) of this chapter.

9 §18-402. Management of limited liability company.

10 Unless otherwise provided in a limited liability company agreement, the
11 management of a limited liability company shall be vested in its members in
12 proportion to the then current percentage or other interest of members in the
13 profits of the limited liability company owned by all of the members, the
14 decision of members owning more than 50 percent of the said percentage or
15 other interest in the profits controlling; provided, however, that if a
16 limited liability company agreement provides for the management, in whole or
17 in part, of a limited liability company by a manager, the management of the
18 limited liability company, to the extent so provided, shall be vested in the
19 manager who shall be chosen by the members in the manner provided in the
20 limited liability company agreement. The manager shall also hold the offices
21 and have the responsibilities accorded to him by the members and set forth in
22 a limited liability company agreement. Subject to §18-602 of this chapter, a
23 manager shall cease to be a manager as provided in a limited liability company
24 agreement.

25 §18-403. Contributions by a manager.

26 A manager of a limited liability company may make contributions to the
27 limited liability company and share in the profits and losses of, and in
28 distributions from, the limited liability company as a member. A person who
29 is both a manager and a member has the rights and powers, and is subject to
30 the restrictions and liabilities, of a manager and, except as provided in a
31 limited liability company agreement, also has the rights and powers, and is
32 subject to the restrictions and liabilities, of a member to the extent of his
33 participation in the limited liability company as a member.

34 §18-404. Classes and voting.

1 (a) A limited liability company agreement may provide for classes or
2 groups of managers having such relative rights, powers and duties as the
3 limited liability company agreement may provide, and may make provision for
4 the future creation in the manner provided in the limited liability company
5 agreement of additional classes or groups of managers having such relative
6 rights, powers and duties as may from time to time be established, including
7 rights, powers and duties senior to existing classes and groups of managers.
8 A limited liability company agreement may provide for the taking of an action,
9 including the amendment of the limited liability company agreement, without
10 the vote or approval of any manager or class or group of managers, including
11 an action to create under the provisions of the limited liability company
12 agreement a class or group of limited liability company interests that was not
13 previously outstanding.

14 (b) A limited liability company agreement may grant to all or certain
15 identified managers or a specified class or group of the managers the right to
16 vote, separately or with all or any class or group of managers or members, on
17 any matter. Voting by managers may be on a per capita, number, financial
18 interest, class, group or any other basis.

19 (c) A limited liability company agreement which grants a right to vote
20 may set forth provisions relating to notice of the time, place or purpose of
21 any meeting at which any matter is to be voted on by any manager or class or
22 group of managers, waiver of any such notice, action by consent without a
23 meeting, the establishment of a record date, quorum requirements, voting in
24 person or by proxy, or any other matter with respect to the exercise of any
25 such right to vote.

26 §18-405. Remedies for breach of limited liability company agreement by
27 manager.

28 A limited liability company agreement may provide that (1) a manager who
29 fails to perform in accordance with, or to comply with the terms and
30 conditions of, the limited liability company agreement shall be subject to
31 specified penalties or specified consequences, and (2) at the time or upon the
32 happening of events specified in the limited liability company agreement, a
33 manager shall be subject to specified penalties or specified consequences.

34 §18-406. Reliance on reports and information by member or manager.

35 A member or manager of a limited liability company shall be fully
36 protected in relying in good faith upon the records of the limited liability

1 company and upon such information, opinions, reports or statements presented
2 to the limited liability company by any of its other managers, members,
3 officers, employees, or committees of the limited liability company, or by any
4 other person, as to matters the member or manager reasonably believes are
5 within such other person's professional or expert competence and who has been
6 selected with reasonable care by or on behalf of the limited liability
7 company, including information, opinions, reports or statements as to the
8 value and amount of the assets, liabilities, profits or losses of the limited
9 liability company or any other facts pertinent to the existence and amount of
10 assets from which distributions to members might properly be paid.

11 Subchapter V. Finance

12 §18-501. Form of contribution.

13 The contribution of a member to a limited liability company may be in
14 cash, property or services rendered, or a promissory note or other obligation
15 to contribute cash or property or to perform services.

16 §18-502. Liability for contribution.

17 (a) Except as provided in a limited liability company agreement, a
18 member is obligated to a limited liability company to perform any promise to
19 contribute cash or property or to perform services, even if he is unable to
20 perform because of death, disability or any other reason. If a member does
21 not make the required contribution of property or services, he is obligated at
22 the option of the limited liability company to contribute cash equal to that
23 portion of the agreed value (as stated in the records of the limited liability
24 company) of the contribution that has not been made. The foregoing option
25 shall be in addition to, and not in lieu of, any other rights, including the
26 right to specific performance, that the limited liability company may have
27 against such member under the limited liability company agreement or
28 applicable law.

29 (b) Unless otherwise provided in a limited liability company
30 agreement, the obligation of a member to make a contribution or return money
31 or other property paid or distributed in violation of this chapter may be
32 compromised only by consent of all the members. Notwithstanding the
33 compromise, a creditor of a limited liability company who extends credit,
34 after the entering into of a limited liability company agreement or an
35 amendment thereto which, in either case, reflects the obligation, and before

1 the amendment thereof to reflect the compromise, may enforce the original
2 obligation to the extent that, in extending credit, the creditor reasonably
3 relied on the obligation of a member to make a contribution or return. A
4 conditional obligation of a member to make a contribution or return money or
5 other property to a limited liability company may not be enforced unless the
6 conditions of the obligation have been satisfied or waived as to or by such
7 member. Conditional obligations include contributions payable upon a
8 discretionary call of a limited liability company prior to the time the call
9 occurs.

10 (c) A limited liability company agreement may provide that the
11 interest of any member who fails to make any contribution that he is obligated
12 to make shall be subject to specified penalties for, or specified consequences
13 of, such failure. Such penalty or consequence may take the form of reducing
14 or eliminating the defaulting member's proportionate interest in a limited
15 liability company, subordinating his limited liability company interest to
16 that of nondefaulting members, a forced sale of his limited liability company
17 interest, forfeiture of his limited liability company interest, the lending by
18 other members of the amount necessary to meet his commitment, a fixing of the
19 value of his limited liability company interest by appraisal or by formula and
20 redemption or sale of his limited liability company interest at such value, or
21 other penalty or consequence.

22 §18-503. Allocation of profits and losses.

23 The profits and losses of a limited liability company shall be allocated
24 among the members, and among classes or groups of members, in the manner
25 provided in a limited liability company agreement. If the limited liability
26 company agreement does not so provide, profits and losses shall be allocated
27 on the basis of the agreed value (as stated in the records of the limited
28 liability company) of the contributions made by each member to the extent they
29 have been received by the limited liability company and have not been returned.

30 §18-504. Allocation of distributions.

31 Distributions of cash or other assets of a limited liability company
32 shall be allocated among the members, and among classes or groups of members,
33 in the manner provided in a limited liability company agreement. If the
34 limited liability company agreement does not so provide, distributions shall
35 be made on the basis of the agreed value (as stated in the records of the

1 limited liability company) of the contributions made by each member to the
2 extent they have been received by the limited liability company and have not
3 been returned.

4 Subchapter VI. Distributions and Resignation

5 §18-601. Interim distributions.

6 Except as provided in this subchapter, to the extent and at the times or
7 upon the happening of the events specified in a limited liability company
8 agreement, a member is entitled to receive from a limited liability company
9 distributions before his resignation from the limited liability company and
10 before the dissolution and winding up thereof.

11 §18-602. Resignation of manager.

12 A manager may resign as a manager of a limited liability company at the
13 time or upon the happening of events specified in a limited liability company
14 agreement and in accordance with the limited liability company agreement. A
15 limited liability company agreement may provide that a manager shall not have
16 the right to resign as a manager of a limited liability company. Not-
17 withstanding that a limited liability company agreement provides that a
18 manager does not have the right to resign as a manager of a limited liability
19 company, a manager may resign as a manager of a limited liability company at
20 any time by giving written notice to the members and other managers. If the
21 resignation of a manager violates a limited liability company agreement, in
22 addition to any remedies otherwise available under applicable law, a limited
23 liability company may recover from the resigning manager damages for breach of
24 the limited liability company agreement and offset the damages against the
25 amount otherwise distributable to the resigning manager.

26 §18-603. Resignation of member.

27 A member may resign from a limited liability company at the time or upon
28 the happening of events specified in a limited liability company agreement and
29 in accordance with the limited liability company agreement. If a limited
30 liability company agreement does not specify the time or the events upon the
31 happening of which a member may resign or a definite time for the dissolution
32 and winding up of a limited liability company, a member may resign upon not
33 less than 6 months' prior written notice to the limited liability company at
34 its registered office as set forth in the certificate of formation filed in
35 the Office of the Secretary of State and to each member and manager at each

1 member's and manager's address as set forth on the records of the limited
2 liability company. Notwithstanding anything to the contrary set forth in this
3 chapter, a limited liability company agreement may provide that a member may
4 not resign from a limited liability company or assign his limited liability
5 company interest prior to the dissolution and winding up of the limited
6 liability company.

7 §18-604. Distribution upon resignation.

8 Except as provided in this subchapter, upon resignation any resigning
9 member is entitled to receive any distribution to which he is entitled under a
10 limited liability company agreement and, if not otherwise provided in a
11 limited liability company agreement, he is entitled to receive, within a
12 reasonable time after resignation, the fair value of his limited liability
13 company interest as of the date of resignation based upon his right to share
14 in distributions from the limited liability company.

15 §18-605. Distribution in kind.

16 Except as provided in a limited liability company agreement, a member,
17 regardless of the nature of his contribution, has no right to demand and
18 receive any distribution from a limited liability company in any form other
19 than cash. Except as provided in a limited liability company agreement, a
20 member may not be compelled to accept a distribution of any asset in kind from
21 a limited liability company to the extent that the percentage of the asset
22 distributed to him exceeds a percentage of that asset which is equal to the
23 percentage in which he shares in distributions from the limited liability
24 company.

25 §18-606. Right to distribution.

26 Subject to §§18-607 and 18-804 of this chapter, and unless otherwise
27 provided in a limited liability company agreement, at the time a member
28 becomes entitled to receive a distribution, he has the status of, and is
29 entitled to all remedies available to, a creditor of a limited liability
30 company with respect to the distribution. A limited liability company
31 agreement may provide for the establishment of a record date with respect to
32 allocations and distributions by a limited liability company.

33 §18-607. Limitations on distribution.

34 (a) A limited liability company shall not make a distribution to a
35 member to the extent that at the time of the distribution, after giving effect

1 to the distribution, all liabilities of the limited liability company, other
2 than liabilities to members on account of their limited liability company
3 interests and liabilities for which the recourse of creditors is limited to
4 specified property of the limited liability company, exceed the fair value of
5 the assets of the limited liability company, except that the fair value of
6 property that is subject to a liability for which the recourse of creditors is
7 limited shall be included in the assets of the limited liability company only
8 to the extent that the fair value of that property exceeds that liability.

9 (b) A member who receives a distribution in violation of subsection
10 (a) of this section, and who knew at the time of the distribution that the
11 distribution violated subsection (a) of this section, shall be liable to a
12 limited liability company for the amount of the distribution. A member who
13 receives a distribution in violation of subsection (a) of this section, and
14 who did not know at the time of the distribution that the distribution
15 violated subsection (a) of this section, shall not be liable for the amount of
16 the distribution. Subject to subsection (c) of this section, this subsection
17 (b) shall not affect any obligation or liability of a member under a limited-
18 liability company agreement or other applicable law for the amount of a
19 distribution.

20 (c) Unless otherwise agreed, a member who receives a distribution from
21 a limited liability company shall have no liability under this chapter or
22 other applicable law for the amount of the distribution after the expiration
23 of three years from the date of the distribution unless an action to recover
24 the distribution from such member is commenced prior to the expiration of the
25 said three year period and an adjudication of liability against such member is
26 made in the said action.

27 Subchapter VII. Assignment of Limited Liability Company Interests

28 §18-701. Nature of limited liability company interest.

29 A limited liability company interest is personal property. A member has
30 no interest in specific limited liability company property.

31 §18-702. Assignment of limited liability company interest.

32 (a) A limited liability company interest is assignable in whole or in
33 part except as provided in a limited liability company agreement. The
34 assignee of a member's limited liability company interest shall have no right
35 to participate in the management of the business and affairs of a limited

1 liability company except as provided in a limited liability company agreement
2 and upon:

3 (1) The approval of all of the members of the limited liability
4 company other than the member assigning his limited liability company
5 interest; or

6 (2) Compliance with any procedure provided for in the limited
7 liability company agreement.

8 (b) Unless otherwise provided in a limited liability company agreement:

9 (1) An assignment entitles the assignee to share in such profits
10 and losses, to receive such distribution or distributions, and to receive such
11 allocation of income, gain, loss, deduction, or credit or similar item to
12 which the assignor was entitled, to the extent assigned; and

13 (2) A member ceases to be a member and to have the power to
14 exercise any rights or powers of a member upon assignment of all of his
15 limited liability company interest. Unless otherwise provided in a limited
16 liability company agreement, the pledge of, or granting of a security
17 interest, lien or other encumbrance in or against, any or all of the limited
18 liability company interest of a member shall not cause the member to cease to
19 be a member or to have the power to exercise any rights or powers of a member.

20 (c) A limited liability company agreement may provide that a member's
21 interest in a limited liability company may be evidenced by a certificate of
22 limited liability company interest issued by the limited liability company.

23 (d) Unless otherwise provided in a limited liability company agreement
24 and except to the extent assumed by agreement, until an assignee of a limited
25 liability company interest becomes a member, the assignee shall have no
26 liability as a member solely as a result of the assignment.

27 §18-703. Rights of judgment creditor.

28 On application to a court of competent jurisdiction by any judgment
29 creditor of a member, the court may charge the limited liability company
30 interest of the member with payment of the unsatisfied amount of the judgment
31 with interest. To the extent so charged, the judgment creditor has only the
32 rights of an assignee of the limited liability company interest. This chapter
33 does not deprive any member of the benefit of any exemption laws applicable to
34 his limited liability company interest.

35 §18-704. Right of assignee to become member.

1 (a) An assignee of a limited liability company interest may become a
2 member as provided in a limited liability company agreement and upon:

3 (1) The approval of all of the members of the limited liability
4 company other than the member assigning his limited liability company
5 interest; or

6 (2) Compliance with any procedure provided for in the limited
7 liability company agreement.

8 (b) An assignee who has become a member has, to the extent assigned,
9 the rights and powers, and is subject to the restrictions and liabilities, of
10 a member under a limited liability company agreement and this chapter.

11 Notwithstanding the foregoing, unless otherwise provided in a limited
12 liability company agreement, an assignee who becomes a member is liable for
13 the obligations of his assignor to make contributions as provided in §18-502
14 of this chapter, but shall not be liable for the obligations of his assignor
15 under subchapter VI of this chapter. However, the assignee is not obligated
16 for liabilities, including the obligations of his assignor to make
17 contributions as provided in §18-502 of this chapter, unknown to the assignee
18 at the time he became a member and which could not be ascertained from a
19 limited liability company agreement.

20 (c) Whether or not an assignee of a limited liability company interest
21 becomes a member, the assignor is not released from his liability to a limited
22 liability company under subchapters V and VI of this chapter.

23 §18-705. Powers of estate of deceased or incompetent member.

24 If a member who is an individual dies or a court of competent
25 jurisdiction adjudges him to be incompetent to manage his person or his
26 property, the member's executor, administrator, guardian, conservator or other
27 legal representative may exercise all of the member's rights for the purpose
28 of settling his estate or administering his property, including any power
29 under a limited liability company agreement of an assignee to become a
30 member. If a member is a corporation, trust or other entity and is dissolved
31 or terminated, the powers of that member may be exercised by its legal
32 representative or successor.

33 Subchapter VIII. Dissolution

34 §18-801. Dissolution.

1 A limited liability company is dissolved and its affairs shall be wound
2 up upon the first to occur of the following:

3 (1) At the time specified in a limited liability company agreement, or
4 thirty (30) years from the date of the formation of the limited liability
5 company if no such time is set forth in the limited liability company
6 agreement;

7 (2) Upon the happening of events specified in a limited liability
8 company agreement;

9 (3) The written consent of all members;

10 (4) The death, retirement, resignation, expulsion, bankruptcy or
11 dissolution of a member or the occurrence of any other event which terminates
12 the continued membership of a member in the limited liability company unless
13 the business of the limited liability company is continued either by the
14 consent of all the remaining members within 90 days following the occurrence
15 of any such event or pursuant to a right to continue stated in the limited
16 liability company agreement; or

17 (5) The entry of a decree of judicial dissolution under §18-802 of
18 this title.

19 §18-802. Judicial dissolution.

20 (a) On application by or for a member or manager the Court of Chancery
21 may decree dissolution of a limited liability company whenever it is not
22 reasonably practicable to carry on the business in conformity with a limited
23 liability company agreement.

24 (b) If a limited liability company has any publicly traded limited
25 liability company interests and such limited liability company is treated as a
26 corporation for purposes of United States income taxation, then, on
27 application by or for a member or manager, the Court of Chancery shall grant
28 such relief as may be appropriate to cause the limited liability company not
29 to have any publicly traded limited liability company interests or decree
30 dissolution of the limited liability company.

31 §18-803. Winding up.

32 (a) Unless otherwise provided in a limited liability company
33 agreement, a manager who has not wrongfully dissolved a limited liability
34 company or, if none, the members or a person approved by the members or, if
35 there is more than one class or group of members, then by each class or group

1 of members, in either case, by members who own more than 50 percent of the
2 then current percentage or other interest in the profits of the limited
3 liability company owned by all of the members or by the members in each class
4 or group, as appropriate, may wind up the limited liability company's affairs;
5 but the Court of Chancery, upon cause shown, may wind up the limited liability
6 company's affairs upon application of any member or manager, his legal
7 representative or assignee, and in connection therewith, may appoint a
8 liquidating trustee.

9 (b) Upon dissolution of a limited liability company and until the
10 filing of a certificate of cancellation as provided in §18-203 of this
11 chapter, the persons winding up the limited liability company's affairs may,
12 in the name of, and for and on behalf of, the limited liability company,
13 prosecute and defend suits, whether civil, criminal or administrative,
14 gradually settle and close the limited liability company's business, dispose
15 of and convey the limited liability company's property, discharge or make
16 reasonable provision for the limited liability company's liabilities, and
17 distribute to the members any remaining assets of the limited liability
18 company, all without affecting the liability of members and managers and
19 without imposing liability on a liquidating trustee.

20 §18-804. Distribution of assets.

21 (a) Upon the winding up of a limited liability company, the assets
22 shall be distributed as follows:

23 (1) To creditors, including members and managers who are
24 creditors, to the extent otherwise permitted by law, in satisfaction of
25 liabilities of the limited liability company (whether by payment or the making
26 of reasonable provision for payment thereof) other than liabilities for which
27 reasonable provision for payment has been made and liabilities for
28 distributions to members under §18-601 or §18-604 of this chapter;

29 (2) Unless otherwise provided in a limited liability company
30 agreement, to members and former members in satisfaction of liabilities for
31 distributions under §18-601 or §18-604 of this chapter; and

32 (3) Unless otherwise provided in a limited liability company
33 agreement, to members first for the return of their contributions and second
34 respecting their limited liability company interests, in the proportions in
35 which the members share in distributions.

1 (b) A limited liability company which has dissolved shall pay or make
2 reasonable provision to pay all claims and obligations, including all
3 contingent, conditional or unmatured claims and obligations, known to the
4 limited liability company and all claims and obligations which are known to
5 the limited liability company but for which the identity of the claimant is
6 unknown. If there are sufficient assets, such claims and obligations shall be
7 paid in full and any such provision for payment made shall be made in full.
8 If there are insufficient assets, such claims and obligations shall be paid or
9 provided for according to their priority and, among claims and obligations of
10 equal priority, ratably to the extent of assets available therefor. Unless
11 otherwise provided in a limited liability company agreement, any remaining
12 assets shall be distributed as provided in this chapter. Any liquidating
13 trustee winding up a limited liability company's affairs who has complied with
14 this section shall not be personally liable to the claimants of the dissolved
15 limited liability company by reason of such person's actions in winding up the
16 limited liability company.

17 Subchapter IX. Foreign Limited Liability Companies

18 §18-901. Law governing.

19 (a) Subject to the Constitution of the State of Delaware:

20 (1) The laws of the State, territory, possession, or other
21 jurisdiction or country under which a foreign limited liability company is
22 organized govern its organization and internal affairs and the liability of
23 its members and managers; and

24 (2) A foreign limited liability company may not be denied
25 registration by reason of any difference between those laws and the laws of
26 the State of Delaware.

27 (b) A foreign limited liability company shall be subject to §18-106 of
28 this chapter.

29 §18-902. Registration required; application.

30 (a) Before doing business in the State of Delaware, a foreign limited
31 liability company shall register with the Secretary of State. In order to
32 register, a foreign limited liability company shall submit to the Secretary of
33 State:

34 (1) A copy executed by an authorized person of an application for
35 registration as a foreign limited liability company, setting forth:

1 a. The name of the foreign limited liability company and, if
2 different, the name under which it proposes to register and do
3 business in the State of Delaware;
4 b. The state, territory, possession or other jurisdiction or
5 country where formed, the date of its formation and a statement
6 from an authorized person that, as of the date of filing, the
7 foreign limited liability company validly exists as a limited
8 liability company under the laws of the jurisdiction of its
9 formation;
10 c. The nature of the business or purposes to be conducted or
11 promoted in the State of Delaware;
12 d. The address of the registered office and the name and address
13 of the registered agent for service of process required to be
14 maintained by §18-904(b) of this chapter;
15 e. A statement that the Secretary of State is appointed the agent
16 of the foreign limited liability company for service of process
17 under the circumstances set forth in §18-910(b) of this chapter;
18 and
19 f. The date on which the foreign limited liability company first
20 did, or intends to do, business in the State of Delaware.
21 (2) A fee as set forth in §18-1105(a)(6) of this chapter shall be
22 paid.
23 (b) A person shall not be deemed to be doing business in the State of
24 Delaware solely by reason of being a member or manager of a domestic limited
25 liability company or a foreign limited liability company.
26 §18-903. Issuance of registration.
27 (a) If the Secretary of State finds that an application for
28 registration conforms to law and all requisite fees have been paid, he shall:
29 (1) Certify that the application has been filed in his office by
30 endorsing upon the original application the word "Filed", and the date
31 and hour of the filing. This endorsement is conclusive of the date and
32 time of its filing in the absence of actual fraud;
33 (2) File and index the endorsed application.
34 (b) The duplicate of the application, similarly endorsed, shall be
35 returned to the person who filed the application or his representative.

1 (c) The filing of the application with the Secretary of State shall
2 make it unnecessary to file any other documents under Chapter 31 of this title.
3 §18-904. Name; registered office; registered agent.

4 (a) A foreign limited liability company may register with the
5 Secretary of State under any name (whether or not it is the name under which
6 it is registered in the jurisdiction of its formation) that includes the words
7 "Limited Liability Company" or the abbreviation "L.L.C." and that could be
8 registered by a domestic limited liability company; provided, however, that a
9 foreign limited liability company may register under any name which is not
10 such as to distinguish it upon the records in the Office of the Secretary of
11 State from the name of any domestic or foreign corporation, business trust,
12 limited liability company or limited partnership reserved, registered or
13 organized under the laws of the State of Delaware with the written consent of
14 the other corporation, business trust, limited liability company or limited
15 partnership, which written consent shall be filed with the Secretary of State.

16 (b) Each foreign limited liability company shall have and maintain in
17 the State of Delaware:

18 (1) A registered office which may but need not be a place of its
19 business in the State of Delaware; and

20 (2) A registered agent for service of process on the foreign
21 limited liability company, which agent may be either an individual
22 resident of the State of Delaware whose business office is identical
23 with the foreign limited liability company's registered office, or a
24 domestic corporation or a foreign corporation authorized to do business
25 in the State of Delaware having a business office identical with such
26 registered office.

27 (c) A registered agent may change the address of the registered office
28 of the foreign limited liability company(s) for which he is registered agent
29 to another address in the State of Delaware by paying a fee as set forth in
30 §18-1105(a)(7) of this chapter and filing with the Secretary of State a
31 certificate, executed by such registered agent, setting forth the names of all
32 the foreign limited liability companies represented by such registered agent,
33 and the address at which such registered agent has maintained the registered
34 office for each of such foreign limited liability companies, and further
35 certifying to the new address to which each such registered office will be

1 changed on a given day, and at which new address such registered agent will
2 thereafter maintain the registered office for each of the foreign limited
3 liability companies recited in the certificate. Upon the filing of such
4 certificate, the Secretary of State shall furnish to the registered agent a
5 certified copy of the same under his hand and seal of office, and thereafter,
6 or until further change of address, as authorized by law, the registered
7 office in the State of Delaware of each of the foreign limited liability
8 companies recited in the certificate shall be located at the new address of
9 the registered agent thereof as given in the certificate. In the event of a
10 change of name of any person acting as a registered agent of a foreign limited
11 liability company, such registered agent shall file with the Secretary of
12 State a certificate, executed by such registered agent, setting forth the new
13 name of such registered agent, the name of such registered agent before it was
14 changed, the names of all the foreign limited liability companies represented
15 by such registered agent, and the address at which such registered agent has
16 maintained the registered office for each of such foreign limited liability
17 companies, and shall pay a fee as set forth in §18-1105(a)(7) of this
18 chapter. Upon the filing of such certificate, the Secretary of State shall
19 furnish to the registered agent a certified copy of the same under his hand
20 and seal of office. Filing a certificate under this section shall be deemed
21 to be an amendment of the application of each foreign limited liability
22 company affected thereby and each foreign limited liability company shall not
23 be required to take any further action with respect thereto, to amend its
24 application under §18-905 of this chapter. Any registered agent filing a
25 certificate under this section shall promptly, upon such filing, deliver a
26 copy of any such certificate to each foreign limited liability company
27 affected thereby.

28 (d) The registered agent of 1 or more foreign limited liability
29 companies may resign and appoint a successor registered agent by paying a fee
30 as set forth in §18-1105(a)(7) of this chapter and filing a certificate with
31 the Secretary of State, stating that it resigns and the name and address of
32 the successor registered agent. There shall be attached to such certificate a
33 statement executed by each affected foreign limited liability company
34 ratifying and approving such change of registered agent. Upon such filing,
35 the successor registered agent shall become the registered agent of such

1 foreign limited liability company as has ratified and approved such
2 substitution and the successor registered agent's address, as stated in such
3 certificate, shall become the address of each such foreign limited liability
4 company's registered office in the State of Delaware. The Secretary of State
5 shall furnish to the successor registered agent a certified copy of the
6 certificate of resignation. Filing of such certificate of resignation shall
7 be deemed to be an amendment of the application of each foreign limited
8 liability company affected thereby and each such foreign limited liability
9 company shall not be required to take any further action with respect thereto,
10 to amend its application under §18-905 of this chapter.

11 (e) The registered agent of a foreign limited liability company may
12 resign without appointing a successor registered agent by paying a fee as set
13 forth in §18-1105(a)(7) of this chapter and filing a certificate with the
14 Secretary of State stating that it resigns as registered agent for the foreign
15 limited liability company identified in the certificate, but such resignation
16 shall not become effective until 120 days after the certificate is filed.
17 There shall be attached to such certificate an affidavit of such registered
18 agent, if an individual, or of the president, a vice-president or the
19 secretary thereof if a corporation, that at least 30 days prior to and on or
20 about the date of the filing of said certificate, notices were sent by cer-
21 tified or registered mail to the foreign limited liability companies for which
22 such registered agent is resigning as registered agent, at the principal
23 office thereof within or outside the State of Delaware, if known to such
24 registered agent or, if not, to the last known address of the attorney or
25 other individual at whose request such registered agent was appointed for such
26 foreign limited liability company, of the resignation of such registered
27 agent. After receipt of the notice of the resignation of its registered
28 agent, the foreign limited liability company for which such registered agent
29 was acting shall obtain and designate a new registered agent, to take the
30 place of the registered agent so resigning. If such foreign limited liability
31 company fails to obtain and designate a new registered agent as aforesaid
32 prior to the expiration of the period of 120 days after the filing by the
33 registered agent of the certificate of resignation, such foreign limited
34 liability company shall not be permitted to do business in the State of
35 Delaware and its registration shall be deemed to be cancelled. After the

1 resignation of the registered agent shall have become effective as provided in
2 this section and if no new registered agent shall have been obtained and
3 designated in the time and manner aforesaid, service of legal process against
4 the foreign limited liability company for which the resigned registered agent
5 had been acting shall thereafter be upon the Secretary of State in accordance
6 with §18-911 of this chapter.

7 §18-905. Amendments to application.

8 If any statement in the application for registration of a foreign
9 limited liability company was false when made or any arrangements or other
10 facts described have changed, making the application false in any respect, the
11 foreign limited liability company shall promptly file in the Office of the
12 Secretary of State a certificate, executed by an authorized person, correcting
13 such statement, together with a fee as set forth in §18-1105(a)(6) of this
14 chapter.

15 §18-906. Cancellation of registration.

16 A foreign limited liability company may cancel its registration by
17 filing with the Secretary of State a certificate of cancellation, executed by
18 an authorized person, together with a fee as set forth in §18-1105(a)(6) of
19 this chapter. A cancellation does not terminate the authority of the Secre-
20 tary of State to accept service of process on the foreign limited liability
21 company with respect to causes of action arising out of the doing of business
22 in the State of Delaware.

23 §18-907. Doing business without registration.

24 (a) A foreign limited liability company doing business in the State of
25 Delaware may not maintain any action, suit or proceeding in the State of
26 Delaware until it has registered in the State of Delaware, and has paid to the
27 State of Delaware all fees and penalties for the years or parts thereof,
28 during which it did business in the State of Delaware without having
29 registered.

30 (b) The failure of a foreign limited liability company to register in
31 the State of Delaware does not impair:

32 (1) The validity of any contract or act of the foreign limited
33 liability company;

34 (2) The right of any other party to the contract to maintain any
35 action, suit or proceeding on the contract; or

1 (3) Prevent the foreign limited liability company from defending
2 any action, suit or proceeding in any court of the State of Delaware.

3 (c) A member or a manager of a foreign limited liability company is
4 not liable for the obligations of the foreign limited liability company solely
5 by reason of the limited liability company's having done business in the State
6 of Delaware without registration.

7 (d) Any foreign limited liability company doing business in the State
8 of Delaware without first having registered shall be fined and shall pay to
9 the Secretary of State \$200 for each year or part thereof during which the
10 foreign limited liability company failed to register in the State of Delaware.
11 §18-908. Foreign limited liability companies doing business without having
12 qualified; injunctions.

13 The Court of Chancery shall have jurisdiction to enjoin any foreign
14 limited liability company, or any agent thereof, from doing any business in
15 the State of Delaware if such foreign limited liability company has failed to
16 register under this subchapter or if such foreign limited liability company
17 has secured a certificate of the Secretary of State under §18-903 of this
18 chapter on the basis of false or misleading representations. The Attorney
19 General shall, upon his own motion or upon the relation of proper parties,
20 proceed for this purpose by complaint in any county in which such foreign
21 limited liability company is doing or has done business.

22 §18-909. Execution; liability.

23 Section 18-204(c) of this chapter shall be applicable to foreign limited
24 liability companies as if they were domestic limited liability companies.

25 §18-910. Service of process on registered foreign limited liability
26 companies.

27 (a) Service of legal process upon any foreign limited liability
28 company shall be made by delivering a copy personally to any managing or
29 general agent or manager of the foreign limited liability company in the State
30 of Delaware or the registered agent of the foreign limited liability company
31 in the State of Delaware, or by leaving it at the dwelling house or usual
32 place of abode in the State of Delaware of any such managing or general agent,
33 manager or registered agent (if the registered agent be an individual), or at
34 the registered office or other place of business of the foreign limited
35 liability company in the State of Delaware. If the registered agent be a

1 corporation, service of process upon it as such may be made by serving, in the
2 State of Delaware, a copy thereof on the president, vice-president, secretary,
3 assistant secretary or any director of the corporate registered agent.
4 Service by copy left at the dwelling house or usual place of abode of any
5 managing or general agent, manager or registered agent, or at the registered
6 office or other place of business of the foreign limited liability company in
7 the State of Delaware, to be effective must be delivered thereat at least 6
8 days before the return date of the process, and in the presence of an adult
9 person, and the officer serving the process shall distinctly state the manner
10 of service in his return thereto. Process returnable forthwith must be
11 delivered personally to the managing or general agent, manager or registered
12 agent.

13 (b) In case the officer whose duty it is to serve legal process cannot
14 by due diligence serve the process in any manner provided for by subsection
15 (a) of this section, it shall be lawful to serve the process against the
16 foreign limited liability company upon the Secretary of State, and such
17 service shall be as effectual for all intents and purposes as if made in any
18 of the ways provided for in subsection (a) hereof. In the event service is
19 effected through the Secretary of State in accordance with this subsection,
20 the Secretary of State shall forthwith notify the foreign limited liability
21 company by letter, certified mail, return receipt requested, directed to the
22 foreign limited liability company at its last registered office. Such letter
23 shall enclose a copy of the process and any other papers served on the
24 Secretary of State pursuant to this subsection. It shall be the duty of the
25 plaintiff in the event of such service to serve process and any other papers
26 in duplicate, to notify the Secretary of State that service is being effected
27 pursuant to this subsection, and to pay to the Secretary of State the sum of
28 \$50 for the use of the State of Delaware, which sum shall be taxed as a part
29 of the costs in the proceeding if the plaintiff shall prevail therein. The
30 Secretary of State shall maintain an alphabetical record of any such service
31 setting forth the name of the plaintiff and defendant, the title, docket
32 number and nature of the proceeding in which process has been served upon him,
33 the fact that service has been effected pursuant to this subsection, the
34 return date thereof and the day and hour when the service was made. The
35 Secretary of State shall not be required to retain such information for a

1 period longer than 5 years from his receipt of the service of process.

2 §18-911. Service of process on unregistered foreign limited liability
3 companies.

4 (a) Any foreign limited liability company which shall do business in
5 the State of Delaware without having registered under §18-902 of this chapter
6 shall be deemed to have thereby appointed and constituted the Secretary of
7 State of the State of Delaware its agent for the acceptance of legal process
8 in any civil action, suit or proceeding against it in any State or Federal
9 Court in the State of Delaware arising or growing out of any business done by
10 it within the State of Delaware. The doing of business in the State of
11 Delaware by such foreign limited liability company shall be a signification of
12 the agreement of such foreign limited liability company that any such process
13 when so served shall be of the same legal force and validity as if served
14 upon an authorized manager or agent personally within the State of Delaware.

15 (b) Whenever the words ``doing business'', ``the doing of business''
16 or ``business done in this State'', by any such foreign limited liability
17 company are used in this section, they shall mean the course or practice of
18 carrying on any business activities in the State of Delaware, including,
19 without limiting the generality of the foregoing, the solicitation of business
20 or orders in the State of Delaware.

21 (c) In the event of service upon the Secretary of State in accordance
22 with subsection (a) of this section, the Secretary of State shall forthwith
23 notify the foreign limited liability company thereof by letter, certified
24 mail, return receipt requested, directed to the foreign limited liability
25 company at the address furnished to the Secretary of State by the plaintiff in
26 such action, suit or proceeding. Such letter shall enclose a copy of the
27 process and any other papers served upon the Secretary of State. It shall be
28 the duty of the plaintiff in the event of such service to serve process and
29 any other papers in duplicate, to notify the Secretary of State that service
30 is being made pursuant to this subsection, and to pay to the Secretary of
31 State the sum of \$50 for the use of the State of Delaware, which sum shall be
32 taxed as part of the costs in the proceeding, if the plaintiff shall prevail
33 therein. The Secretary of State shall maintain an alphabetical record of any
34 such process setting forth the name of the plaintiff and defendant, the title,
35 docket number and nature of the proceeding in which process has been served

1 upon him, the return date thereof, and the day and hour when the service was
2 made. The Secretary of State shall not be required to retain such information
3 for a period longer than 5 years from his receipt of the service of process.

4 Subchapter X. Derivative Actions

5 §18-1001. Right to bring action.

6 A member may bring an action in the Court of Chancery in the right of a
7 limited liability company to recover a judgment in its favor if managers or
8 members with authority to do so have refused to bring the action or if an
9 effort to cause those managers or members to bring the action is not likely to
10 succeed.

11 §18-1002. Proper plaintiff.

12 In a derivative action, the plaintiff must be a member at the time of
13 bringing the action and:

14 (1) At the time of the transaction of which he complains; or

15 (2) His status as a member had devolved upon him by operation of law
16 or pursuant to the terms of a limited liability company agreement from a
17 person who was a member at the time of the transaction.

18 §18-1003. Complaint.

19 In a derivative action, the complaint shall set forth with particularity
20 the effort, if any, of the plaintiff to secure initiation of the action by a
21 manager or member or the reasons for not making the effort.

22 §18-1004. Expenses.

23 If a derivative action is successful, in whole or in part, as a result
24 of a judgment, compromise or settlement of any such action, the court may
25 award the plaintiff reasonable expenses, including reasonable attorney's fees,
26 from any recovery in any such action or from a limited liability company.

27 Subchapter XI. Miscellaneous

28 §18-1101. Construction and application of chapter and limited liability
29 company agreement.

30 (a) The rule that statutes in derogation of the common law are to be
31 strictly construed shall have no application to this chapter.

32 (b) It is the policy of this chapter to give the maximum effect to the
33 principle of freedom of contract and to the enforceability of limited
34 liability company agreements.

35 (c) To the extent that, at law or in equity, a member or manager has

1 duties (including fiduciary duties) and liabilities relating thereto to a
2 limited liability company or to another member or manager, (1) any such member
3 or manager acting under a limited liability company agreement shall not be
4 liable to the limited liability company or to any such other member or manager
5 for the member's or manager's good faith reliance on the provisions of the
6 limited liability company agreement, and (2) the member's or manager's duties
7 and liabilities may be expanded or restricted by provisions in a limited
8 liability company agreement.

9 (d) Unless the context otherwise requires, as used herein, the
10 singular shall include the plural and the plural may refer to only the
11 singular. The use of any gender shall be applicable to all genders. The
12 captions contained herein are for purposes of convenience only and shall not
13 control or affect the construction of this chapter.

14 §18-1102. Short title.

15 This chapter may be cited as the "Delaware Limited Liability Company
16 Act".

17 §18-1103. Severability.

18 If any provision of this chapter or its application to any person or
19 circumstances is held invalid, the invalidity does not affect other provisions
20 or applications of the chapter which can be given effect without the invalid
21 provision or application, and to this end, the provisions of this chapter are
22 severable.

23 §18-1104. Cases not provided for in this chapter.

24 In any case not provided for in this chapter, the rules of law and
25 equity, including the law merchant, shall govern.

26 §18-1105. Fees.

27 (a) No document required to be filed under this chapter shall be
28 effective until the applicable fee required by this section is paid. The
29 following fees shall be paid to and collected by the Secretary of State for
30 the use of the State of Delaware:

31 (1) Upon the receipt for filing of an application for reservation
32 of name, an application for renewal of reservation or a notice of
33 transfer or cancellation of reservation pursuant to §18-103(b) of this
34 chapter, a fee in the amount of \$10.

1 (2) Upon the receipt for filing of a certificate under §18-104(b)
2 of this chapter, a fee in the amount of \$50, upon the receipt for filing
3 of a certificate under §18-104(c) of this chapter, a fee in the amount
4 of \$50 and a further fee of \$2 for each limited liability company
5 affected by such certificate, and upon the receipt for filing of a
6 certificate under §18-104(d) of this chapter, a fee in the amount of
7 \$10.

8 (3) Upon the receipt for filing of a certificate of formation
9 under §18-201 of this chapter, a certificate of amendment under §18-202
10 of this chapter, a certificate of cancellation under §18-203 of this
11 chapter, a certificate of merger or consolidation under §18-209 of this
12 chapter or a restated certificate of formation under §18-208 of this
13 chapter, a fee in the amount of \$50.

14 (4) For certifying copies of any paper on file as provided for by
15 this chapter, a fee in the amount of \$20 for each copy certified.

16 (5) The Secretary of State may issue photocopies of instruments
17 on file as well as other copies, and for all such copies, whether
18 certified or not, a fee in the amount of \$5 for the first page and \$1
19 per page thereafter shall be paid.

20 (6) Upon the receipt for filing of an application for
21 registration as a foreign limited liability company under §18-902 of
22 this chapter, a certificate under §18-905 of this chapter or a
23 certificate of cancellation under §18-906 of this chapter, a fee in the
24 amount of \$50.

25 (7) Upon the receipt for filing of a certificate under §18-904(c)
26 of this chapter, a fee in the amount of \$50, upon the receipt for filing
27 of a certificate under §18-904(d) of this chapter, a fee in the amount
28 of \$50 and a further fee of \$2 for each foreign limited liability
29 company affected by such certificate, and upon the receipt for filing of
30 a certificate under §18-904(e) of this chapter, a fee in the amount of
31 \$2.50.

32 (8) For preclearance of any document for filing, a fee in the
33 amount of \$250.

34 (9) For preparing and providing a written report of a record
35 search, a fee in the amount of \$30.

1 (10) For issuing any certificate of the Secretary of State,
2 including but not limited to a certificate of good standing, other than
3 a certification of a copy under paragraph (4) of this subsection, a fee
4 in the amount of \$20, except that for issuing any certificate of the
5 Secretary of State that recites all of a limited liability company's
6 filings with the Secretary of State, a fee of \$100 shall be paid for
7 each such certificate.

8 (11) For receiving and filing and/or indexing any certificate,
9 affidavit, agreement or any other paper provided for by this chapter,
10 for which no different fee is specifically prescribed, a fee in the
11 amount of \$25.

12 (12) The Secretary of State may in his discretion charge a fee of
13 \$25 for each check received for payment of any fee that is returned due
14 to insufficient funds or the result of a stop payment order.

15 (b) In addition to those fees charged under subsection (a) of this
16 section, there shall be collected by and paid to the Secretary of State the
17 following:

18 (1) for all services described in subsection (a) of this section
19 that are requested to be completed within the same day as the day of the
20 request, an additional sum of up to \$200; and

21 (2) for all services described in subsection (a) of this section
22 that are requested to be completed within a 24-hour period from the time of
23 the request, an additional sum of up to \$100.

24 The Secretary of State shall establish (and may from time to time amend)
25 a schedule of specific fees payable pursuant to this subsection.

26 (c) The Secretary of State may in his discretion permit the extension
27 of credit for the fees required by this section upon such terms as he shall
28 deem to be appropriate.

29 (d) The Secretary of State shall retain from the revenue collected
30 from the fees required by this section a sum sufficient to provide at all
31 times a fund of at least \$500, but not more than \$1,500, from which he may
32 refund any payment made pursuant to this section to the extent that it exceeds
33 the fees required by this section. The funds shall be deposited in a
34 financial institution which is a legal depository of State of Delaware moneys

1 to the credit of the Secretary of State and shall be disbursable on order of
2 the Secretary of State.

3 (e) Except as provided in this section, the fees of the Secretary of
4 State shall be as provided in §2315 of Chapter 29.

5 §18-1106. Reserved power of State of Delaware to alter or repeal chapter.

6 All provisions of this chapter may be altered from time to time or
7 repealed and all rights of members and managers are subject to this
8 reservation.

9 §18-1107. Taxation of limited liability companies.

10 For purposes of taxation under Title 30, a limited liability company
11 formed under this chapter or qualified to do business in the State of Delaware
12 as a foreign limited liability company shall be classified as a partnership
13 unless classified otherwise for federal income tax purposes, in which case the
14 limited liability company shall be classified in the same manner as it is
15 classified for federal income tax purposes. For purposes of taxation under
16 Title 30, a member or an assignee of a member of a limited liability company
17 formed under this chapter or qualified to do business in the State of Delaware
18 as a foreign limited liability company shall be treated as either a resident
19 or nonresident partner unless classified otherwise for federal income tax
20 purposes, in which case the member or assignee of a member shall have the same
21 status as such member or assignee of a member has for federal income tax
22 purposes.

23 Section 2. Effective Date

24 This Act shall become effective on October 1, 1992.

25 SYNOPSIS

26

The proposed Limited Liability Company Act provides for the formation of
limited liability companies under Delaware law and the qualification of
foreign limited liability companies seeking to do business in Delaware. A
properly structured limited liability company would be classified as a
partnership for federal income tax purposes (*i.e.*, taxed at the member level,
but not at the entity level), and would afford its members the advantage of
limited liability under state law with respect to the limited liability
company's activities. Several states have already adopted their own limited
liability company acts. Many other states, including major commercial
jurisdictions, have introduced limited liability company act legislation in
their respective legislatures. This proposed Limited Liability Company Act
will permit Delaware to remain at the forefront as a jurisdiction of choice
for formation of business organizations.



SPONSOR: Rep. Smith

HOUSE OF REPRESENTATIVES

136TH GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1

TO

HOUSE BILL NO. 608

JUN 23 1992

1 AMEND House Bill No. 608, line 10, page 49 by inserting the subsection
2 designation "(a)" before the word "for" and by adding the following new
3 subsections after line 22, page 49:

4 "(b) Every domestic limited liability company and every foreign limited
5 liability company registered to do business in the State of Delaware shall pay
6 an annual tax, for the use of the State of Delaware, in the amount of \$100.

7 (c) The annual tax shall be due and payable on the first day of June
8 following the close of the calendar year or upon the cancellation of a
9 certificate of formation. The Secretary of State shall receive the annual tax
10 and pay over all taxes collected to the Department of Finance of the State of
11 Delaware. If the annual tax remains unpaid after the due date, the tax shall
12 bear interest at the rate of one and one-half percent for each month or
13 portion thereof until fully paid.

14 (d) The Secretary of State shall, at least 60 days prior to the first day
15 of June of each year, cause to be mailed to each domestic limited liability
16 company and each foreign limited liability company required to comply with the
17 provisions of this section in care of its registered agent in the State of
18 Delaware an annual statement for the tax to be paid hereunder.

19 (e) In the event of neglect, refusal or failure on the part of any domestic
20 limited liability company or foreign limited liability company to pay the
21 annual tax to be paid hereunder on or before the 1st day of June in any year,
22 such domestic limited liability company or foreign limited liability company
23 shall pay the sum of \$100 to be recovered by adding that amount to the annual

1 tax and such additional sum shall become a part of the tax and shall be
2 collected in the same manner and subject to the same penalties.

3 (f) In case any domestic limited liability company or foreign limited
4 liability company shall fail to pay the annual tax due within the time
5 required by this section, and in case the agent in charge of the registered
6 office of any domestic limited liability company or foreign limited liability
7 company upon whom process against such domestic limited liability company or
8 foreign limited liability company may be served shall die, resign, refuse to
9 act as such, remove from the State of Delaware or cannot with due diligence be
10 found, it shall be lawful while default continues to serve process against
11 such domestic limited liability company or foreign limited liability company
12 upon the Secretary of State. Such service upon the Secretary of State shall
13 be made in the manner and shall have the effect stated in §18-105 of this
14 title in the case of a domestic limited liability company and §18-910 of this
15 title in the case of a foreign limited liability company and shall be governed
16 in all respects by said sections.

17 (g) The annual tax shall be a debt due from a domestic limited liability
18 company or foreign limited liability company to the State of Delaware, for
19 which an action at law may be maintained after the same shall have been in
20 arrears for a period of 1 month. The tax shall also be a preferred debt in
21 the case of insolvency.

22 (h) A domestic limited liability company or foreign limited liability
23 company that neglects, refuses or fails to pay the annual tax when due shall,
24 after written demand therefor, mailed on or before the 1st day of September of
25 the year in which such tax is due, by the Secretary of State to such domestic
26 limited liability company or foreign limited liability company in care of its
27 registered agent, cease to be in good standing as a domestic limited liability
28 company or registered as a foreign limited liability company in the State of
29 Delaware on the 1st day of November of the year in which such tax is due
30 unless such tax and all penalties and interest thereon are paid in full before
31 the 1st day of November of the year in which such tax is due.

32 (i) A domestic limited liability company that has ceased to be in good
33 standing or a foreign limited liability company that has ceased to be
34 registered by reason of the failure to pay an annual tax shall be restored to
35 and have the status of a domestic limited liability company in good standing
36 or a foreign limited liability company that is registered in the State of

1 Delaware upon the payment of the annual tax and all penalties and interest
2 thereon for each year for which such domestic limited liability company or
3 foreign limited liability company neglected, refused or failed to pay an
4 annual tax, accompanied by a certificate of the limited liability company
5 executed by an authorized person stating that it is paying all sums due
6 hereunder.

7 (j) The Attorney General, either on his own motion or upon request of the
8 Secretary of State, whenever any annual tax due under this chapter from any
9 domestic limited liability company or foreign limited liability company shall
10 have remained in arrears for a period of 3 months after the tax shall have
11 become payable, may apply to the Court of Chancery, by petition in the name of
12 the State of Delaware, on 5 days' notice to such domestic limited liability
13 company or foreign limited liability company, which notice may be served in
14 such manner as the Court may direct, for an injunction to restrain such
15 domestic limited liability company or foreign limited liability company from
16 the transaction of any business within the State of Delaware or elsewhere,
17 until the payment of the annual tax, and all penalties and interest due
18 thereon and the cost of the application which shall be fixed by the Court.
19 The Court of Chancery may grant the injunction, if a proper case appears, and
20 upon granting and service of the injunction, such domestic limited liability
21 company or foreign limited liability company thereafter shall not transact any
22 business until the injunction shall be dissolved.

23 (k) A domestic limited liability company that has ceased to be in good
24 standing by reason of its neglect, refusal or failure to pay an annual tax
25 shall remain a domestic limited liability company formed under this chapter.
26 The Secretary of State shall not accept for filing any certificate (except a
27 certificate of resignation of a registered agent when a successor registered
28 agent is not being appointed) required or permitted by this chapter to be
29 filed in respect of any domestic limited liability company or foreign limited
30 liability company with has neglected, refused or failed to pay an annual tax,
31 and shall not issue any certificate of good standing with respect to such
32 domestic limited liability company or foreign limited liability company,
33 unless or until such domestic limited liability company or foreign limited
34 liability company shall have been restored to and have the status of a
35 domestic limited liability company in good standing or a foreign limited
36 liability company duly registered in the State of Delaware.

1 (1) A domestic limited liability company that has ceased to be in good
2 standing or a foreign limited liability company has ceased to be registered in
3 the State of Delaware by reason of its neglect, refusal or failure to pay an
4 annual tax may not maintain any action, suit or proceeding in any court of the
5 State of Delaware until such domestic limited liability company or foreign
6 limited liability company has been restored to and has the status of a
7 domestic limited liability company or foreign limited liability company in
8 good standing or duly registered in the State of Delaware. An action, suit or
9 proceeding may not be maintained in any court of the State of Delaware by any
10 successor or assignee of such domestic limited liability company or foreign
11 limited liability company on any right, claim or demand arising out the
12 transaction of business by such domestic limited liability company after it
13 has ceased to be in good standing or a foreign limited liability company that
14 has ceased to be registered in the State of Delaware until such domestic
15 limited liability company or foreign limited liability company, or any person
16 that has acquired all or substantially all of its assets, has paid any annual
17 tax then due and payable, together with penalties and interest thereon.

18 (m) The neglect, refusal or failure of a domestic limited liability company
19 or foreign limited liability company to pay an annual tax shall not impair the
20 validity on any contract, deed, mortgage, security interest, lien or act or
21 such domestic limited liability company or foreign limited liability company
22 or prevent such domestic limited liability company or foreign limited
23 liability company from defending any action, suit or proceeding with any court
24 of the State of Delaware.

25 (n) A member or manager of a domestic limited liability company or foreign
26 limited liability company is not liable for the debts, obligations or
27 liabilities of such domestic limited liability company or foreign limited
28 liability company solely by reason of the neglect, refusal or failure of such
29 domestic limited liability company or foreign limited liability company to pay
30 an annual tax or by reason of such domestic limited liability company or
31 foreign limited liability company ceasing to be in good standing or duly
32 registered."

SYNOPSIS

This Amendment adds language mirroring the Limited Partnership Act in charging \$100 per year tax.